

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #11	CCRB Case #: 201810095	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/18/2017 10:00 PM, Wednesday, 07/19/2017 1:00 AM, Wednesday, 07/19/2017 1:38 AM	Location of Incident: [REDACTED]	Precinct: 14	18 Mo. SOL 1/19/2019	EO SOL 1/19/2019	
Date/Time CV Reported Wed, 12/05/2018 10:23 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 12/05/2018 10:23 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. LT Andrew Johnson	00000	941966	MTS PCT
2. An officer			
3. POM Edward Ahearne	30507	953620	MTS PCT
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Napolitano	10704	956966	MTS PCT
2. POM Robert Sallie	16793	961230	MTS PCT
3. POM Gregory Edgar	30167	942778	010 PCT
4. POF Ragita Blake	26469	948182	010 PCT
5. POM Brendan Oseback	08047	956994	MTS PCT
6. POM Thomas Meaney	22163	962607	MTS PCT
7. SGT Thomas Daly	03644	929987	TB M/TF
8. POM Jonathan Jamieson	28689	957707	TB M/TF

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: On July 18, 2017, at the 42nd Street—Port Authority subway train station in Manhattan, officers did not provide § 87(2)(b) with medical attention.	[REDACTED]
B. Officers	Abuse: On July 18, 2017, at the 42nd Street—Port Authority subway train station in Manhattan, officers questioned § 87(2)(b)	[REDACTED]
C. Officers	Abuse: On July 18, 2017, at the 42nd Street—Port Authority subway train station in Manhattan, officers threatened to arrest § 87(2)(b)	[REDACTED]
D.LT Andrew Johnson	Discourtesy: On July 19, 2017, at West 41st Street and Ninth Avenue in Manhattan, Lieutenant Andrew § 87(2)(b) acted discourteously towards § 87(2)(b)	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
E. An officer	Discourtesy: On July 19, 2017, at Ninth Avenue and West 41st Street in Manhattan, an officer spoke discourteously to § 87(2)(b)	
F. An officer	Force: On July 19, 2017, at § 87(2)(b) in Manhattan, an officer used physical force against § 87(2)(b)	
G. An officer	Discourtesy: On July 19, 2017, at § 87(2)(b) in Manhattan, an officer spoke discourteously to § 87(2)(b)	
H. An officer	Discourtesy: On July 19, 2017, at § 87(2)(b) in Manhattan, an officer spoke discourteously to § 87(2)(b)	
I. An officer	Abuse: On July 19, 2017, at § 87(2)(b) in Manhattan, an officer threatened § 87(2)(b) with the use of force.	
J.POM Edward Ahearne	Force: On July 19, 2017, at § 87(2)(b) in Manhattan, Police Officer Edward Ahearne restricted § 87(2)(b)'s breathing.	

## Case Summary

§ 87(2)(b) filed this complaint with the CCRB under serial number 1-1-1653875133 via the on-line website on December 5, 2018.

On July 18, 2017, at approximately 10:00 p.m. § 87(2)(b) was in an argument with his ex-girlfriend, § 87(2)(b) inside of the 42nd Street—Port Authority subway station in Manhattan. § 87(2)(b) threw a glass bottle at § 87(2)(b) allegedly injuring him. § 87(2)(b) walked away from § 87(2)(b) and two officers approached him. These officers allegedly refused to provide him with medical attention, accused him of entering the Transit system illegally, and said that they would arrest him if he did not leave, he would be arrested for trespassing (**Allegation A-Abuse of Authority-** § 87(2)(g); **Allegation B- Abuse of Authority-** § 87(2)(g); **Allegation C- Abuse of Authority-** § 87(2)(g)). Present was commuter § 87(2)(b) and Sgt. Thomas Daly of the Transit Bureau Manhattan Task Force.

§ 87(2)(b) and § 87(2)(b) left the station, and had a further altercation, that ended with § 87(2)(b) neck being cut, at the intersection of Ninth Avenue and West 41st Street in Manhattan at 1:00 a.m. on July 19, 2017. § 87(2)(b) was arrested and placed into a police car. Lt. Andrew Johnson, then of the Midtown South (14<sup>th</sup>) Precinct, allegedly spit on § 87(2)(b)'s face (**Allegation D- Discourtesy-** § 87(2)(g)). § 87(2)(b) became upset, and started kicking at the doors of the vehicle. An officer allegedly called him a “motherfucker” (**Allegation E-Discourtesy-** § 87(2)(g)). Also present were bystanders § 87(2)(b) and § 87(2)(b). PO Christopher Napolitano of the 14<sup>th</sup> Precinct, PO Edward Ahearne of the 14<sup>th</sup> Precinct, PO Thomas Meaney of the 14<sup>th</sup> Precinct, PO Gregory Edgar of the 10<sup>th</sup> Precinct, and PO Ragita Blake of the 14<sup>th</sup> Precinct.

Two unidentified officers drove § 87(2)(b) to § 87(2)(b) in Manhattan, at § 87(2)(b) in Manhattan at approximately § 87(2)(b). In the ambulance bay, one of these officers allegedly punched § 87(2)(b) in the face, while § 87(2)(b) was handcuffed and told him to, “Stop all that fucking screaming” (**Allegation F- Force-** § 87(2)(g); **Allegation G- Discourtesy-** § 87(2)(g)).

Inside of the Emergency room, § 87(2)(b) was guarded by PO Edward Ahearne and PO Robert Sallie of the Midtown South Precinct. One of the officers allegedly said to him, “If you did something, I don’t care if we’re in the hospital or not, I’m going to fuck you up” (**Allegation H- Discourtesy-** § 87(2)(g); **Allegation I- Threat of Force-** § 87(2)(g)). § 87(2)(b) spit at PO Ahearne and PO Sallie. PO Ahearne who allegedly put a spit mask in § 87(2)(b)'s mouth, and this action allegedly restricted his breathing (**Allegation J-Force-** § 87(2)(g)).

§ 87(2)(b) was arrested § 87(2)(b) as a result of this incident (Board Review 01).

There was no video available for this incident.

§ 87(2)(b) filed this complaint approximately 17 months after the incident date. It was determined that the case should be investigated under the criminal exception rule (Board Review 02)

### **Findings and Recommendations**

**Allegation (A) Abuse of Authority: On July 17, 2017, at the 42<sup>nd</sup> Street—Port Authority subway train station in Manhattan, officers did not provide § 87(2)(b) with medical attention.**

**Allegation (B) Abuse of Authority: On July 17, 2017, at the 42<sup>nd</sup> Street—Port Authority subway train station in Manhattan, officers questioned § 87(2)(b)**

**Allegation (C) Abuse of Authority: On July 17, 2017, at the 42<sup>nd</sup> Street—Port Authority subway train station in Manhattan, officers threatened to arrest § 87(2)(b)**

It is undisputed that § 87(2)(b) was engaged in a dispute with § 87(2)(b) at the 42<sup>nd</sup> Street—Port Authority station, and that § 87(2)(b) used a bottle as a weapon against § 87(2)(b). After she did, she left the scene. The actions of the responding officers, however, are in dispute.

§ 87(2)(b) said that § 87(2)(b) cut him in the neck with a bottle during this dispute, and that he left the scene to walk closer to some nearby tourists, who activated a Station Help Point. He was bleeding substantially from the back of his neck. When officers arrived, they did not get him an ambulance upon his request. They asked where his Metrocard was, and they said that if he did not leave the station, they would arrest him. § 87(2)(b) described the subject officers as two black males in plainclothes. He did not specify the police agency they worked for.

§ 87(2)(b) was identified as a witness by the CCRB via the FDNY radio run. § 87(2)(b) provided a statement to the CCRB over the phone. He said that two individuals, a white male and a female of indeterminate race in her twenties, were drunk and arguing. The female individual threw a bottle towards the male individual. The bottle cut the male individual's hand, and the male individual was bleeding profusely. § 87(2)(b) did not remember how the officers were called to the scene, and did not remember calling 911. When police arrived—§ 87(2)(b) remembered only that an Asian male was officer was on scene—§ 87(2)(b) heard them asking questions about what happened. He remembered that the male individual on scene was uncooperative with the officers. He did not remember whether the officers mentioned arresting the male individual. The female individual left before the incident concluded (Board Review 03).

Sgt. Daly, a white male who was qualified to patrol in plainclothes on the date of the incident, had the incident in his memo book, but did not have any independent recollection of interacting with § 87(2)(b). His memo book entries indicated that he directed PO Jonathan Jamieson to complete a Domestic Incident Report in regards to the matter, but a request for that document returned negative results (Board Review 04).

§ 87(2)(b)'s arrest photo from July 18, 2017 showed that he is a black male. It also showed him wearing a white T-shirt, which did not show any blood (Board Review 05). Criminal Complaint Number § 87(2)(b) notes that § 87(2)(b) was a § 87(2)(b) at the time of the incident (Board Review 06).

Station Help Point Data, obtained from the MTA, showed that at approximately 10:06 p.m., a call was made for a female individual assaulting a male individual. This document noted that the incident occurred near Post #9 of the Times Square Initiative (Board Review 07).

A radio run from FDNY showed that an individual (later identified by the investigation as § 87(2)(b)) called 911 for a female assaulting a male with a bottle. In addition, another individual activated the Station Help Point inside of the station. At approximately 10:05, units described as "14PP2" and 14SP8" arrived on scene and requested EMS. At approximately 10:06

p.m. a unit marked as “TRAN/D1SP10” was dispatched to or arrived on scene. At approximately 10:10 p.m., a sergeant from the Times Square Initiative noted over the radio that the female individual left the scene, and that the male individual was uncooperative. EMS did not treat anyone, as a female individual threw a bottle at a male individual’s back and the male individual was uncooperative (Board Review 08).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) On July 18, 2017, at West 41<sup>st</sup> Street and Ninth Avenue in Manhattan, Lieutenant Andrew Johnson acted discourteously towards § 87(2)(b)**

It is undisputed that § 87(2)(b) and § 87(2)(b) continued their altercation in the vicinity of the Port Authority Bus Terminal, outside of the subway. At some point, § 87(2)(b) sustained a six-inch cut on the front of her neck, and police and EMS were called. Lt. Johnson responded to the scene and assisted in placing § 87(2)(b) in the vehicle.

Upon filing this case, the only allegation § 87(2)(b) noted was that officers “stomped” him (Board Review 21). When he was reached by phone and interviewed, he denied that this ever occurred.

§ 87(2)(b) testified that he did not remember how § 87(2)(b) her neck injury, as his post-traumatic stress disorder renders him unable to account for his actions during stressful situations. As Lt. Johnson placed him in the vehicle, after he was handcuffed by police officers, Lt. Johnson spit on his face. § 87(2)(b) kicked the windows of the police vehicle in retaliation. Once he arrived at § 87(2)(b) he requested that his face be swabbed for evidence.

Lt. Johnson denied spitting in § 87(2)(b) s face. PO Napolitano, PO Sallie, and PO Meaney denied that Lt. Johnson spit on § 87(2)(b). Neither PO Ahearne nor PO Blake recalled any officer spitting on § 87(2)(b) s face. PO Edgar testified that he did not see § 87(2)(b) being placed into a vehicle.

§ 87(2)(b) did not see § 87(2)(b) being taken into custody (Board Review 09). § 87(2)(b) viewed the apprehension from across Eighth Avenue (the investigation determined that the incident occurred at Ninth Avenue). He denied that any traffic obstructed his view of what was happening. He did not mention that he saw any officer spit on § 87(2)(b) (Board Review 10).

§ 87(2)(b) s records from § 87(2)(b) indicated that he requested to hospital staff that his face be swabbed for saliva. Nothing in the records indicated that any evidence collection was undertaken, nor why he wanted it done (Privileged Documents).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) On July 18, 2017, at Ninth Avenue and West 41<sup>st</sup> Street in Manhattan, an officer spoke discourteously to § 87(2)(b)**

Whether an officer spoke discourteously to § 87(2)(b) during his apprehension is in dispute.

§ 87(2)(b) alleged that as he was being placed in a police vehicle, an officer he described only as a white male called him a “motherfucker.” He described many officers coming to the scene, including those he described as wearing the bluish-black uniforms of the “New York State Troopers.”

White males on scene not wearing a lieutenant’s uniform included PO Napolitano, PO Edgar, PO Ahearne, PO Sallie and PO Meaney. None of them, in their interviews, admitted to calling § 87(2)(b) a “motherfucker.” Neither Lt. Johnson nor PO Blake observed any officer calling § 87(2)(b) a “motherfucker.”

“PO Blake, PO Edgar, and PO Napolitano all testified that the incident took place on the border of the 10<sup>th</sup> Precinct and the 14<sup>th</sup> (Midtown South) Precinct.

§ 87(2)(b) did not observe § 87(2)(b)’s apprehension. When § 87(2)(b) was asked whether any officer called § 87(2)(b) a “motherfucker,” he said that he did not remember whether they did. He also stated that he observed the apprehension from across an avenue (Board Review 10).

Event D17071901015 indicated that units from 10<sup>th</sup> Precinct Robbery, 10<sup>th</sup> Precinct Sector officers, the 10<sup>th</sup> Precinct patrol sergeant, the 14<sup>th</sup> Precinct Lieutenant, and a Neighborhood Coordination Officer arrived. Once the Neighborhood Coordination Officer arrived, there was a Level I Mobilization put into place, and the following units were notified: “BS,” “SOD,” “OPS,” “TRAN,” “CWA,” “HWY,” “OCCB,” “RTCC,” “INTEL.” After this Level 1 Mobilization was put in place, a duty captain and at least one other 14<sup>th</sup> Precinct patrol unit arrived on scene (Board Review 11).

The Unusual Occurrence Report generated in regards to this incident indicated that a captain and two lieutenants arrived from the 14<sup>th</sup> Precinct and that two sergeants arrived from the Times Square Unit. This document mentioned that § 87(2)(b) kicked Lt. Johnson in the face during his apprehension. Besides the strike to Lt. Johnson’s face and the fact that PO Napolitano and PO Sallie were in the sector who arrested him, there were no other mentions of specific actions taken by officers during § 87(2)(b)’s apprehension (Board Review 12).

There were no radio recordings available for this incident, as radio recordings are only preserved for one year and § 87(2)(b) filed this complaint 17 months after the incident (Board Review 13). AVL searches conducted for this area were returned with negative results, as AVL searches only last for one year (Board Review 18).

§ 87(2)(g)

**Allegation (F) On July 18, 2017, at § 87(2)(b) in Manhattan, an officer used physical force against § 87(2)(b)**

**Allegation (G) On July 18, 2017, at § 87(2)(b) in Manhattan, an officer spoke discourteously to § 87(2)(b)**

Whether an officer punched § 87(2)(b) in the head in the ambulance bay of § 87(2)(b) and told him, “Stop all that fucking screaming,” is in dispute.

§ 87(2)(b) alleged that after he came to the ambulance bay in a police vehicle, one of the officers transporting him to the hospital punched him several times in the head, and told him to “stop all that fucking screaming.” This occurred while he was handcuffed. He alleged that the officers who transported him were the same ones who guarded him at the hospital, and that they were two white males. He could not describe them further. He differentiated between these two officers by saying that one was the driver and one was the front-seat passenger in the vehicle that transported him. The passenger was the officer who attacked him.

Though § 87(2)(b) did not see § 87(2)(b)'s arrival at the hospital, he stated over the phone that he was sure that § 87(2)(b) did not leave the scene in an ambulance (Board Review 10).

PO Ahearne, a white male officer, was one of the officers who guarded § 87(2)(b) at the hospital. His memo book entries indicated, and he remembered that § 87(2)(b) was brought to the hospital by EMS, and he was in an escorting vehicle. He denied having any contact with § 87(2)(b) in the ambulance bay, and denied punching him while he was handcuffed and telling him to “stop all that fucking screaming.”

One of PO Ahearne's partners on the date of the incident was an officer he was training, PO Meaney, who is also a white male. Per his memo book and recollection, he was present in the Bellevue Trauma ICU where § 87(2)(b) neck was being stitched at the time.

PO Sallie, a white male officer was the officer who ultimately guarded § 87(2)(b) with PO Ahearne. He reported arriving on scene in a different vehicle than either PO Ahearne or § 87(2)(b). He denied punching § 87(2)(b) or using profanity against him.

PO Napolitano, § 87(2)(b)'s arresting officer and PO Sallie's partner, testified that he did not have any contact with § 87(2)(b) after he was apprehended until 5:00 p.m. the next day. His memo book entries mention that he was obtaining video of the altercation between § 87(2)(b) and § 87(2)(b) at 3:00 a.m., when § 87(2)(b) was at the hospital.

AVL search requests for the area around § 87(2)(b) within the confines of the 13<sup>th</sup> Precinct, were returned with negative results, as AVL data is retained for one year, and § 87(2)(b) reported this complaint 17 months after the incident date (Board Review 14). Requests for a Medical Treatment of Prisoner Form were returned with negative results both from the 14<sup>th</sup> Precinct and from in-house IAB (Board Reviews 19 and 20).

§ 87(2)(b)'s medical records from § 87(2)(b) indicated that he was brought in by police officers. There are no injuries to his head mentioned, nor are there any mentions of the officers attacking him in the ambulance bay. There is no mention of the transporting officers' names in the records. In the records, § 87(2)(b) mentions that he was assaulted by NYPD officers en route to the hospital, but no additional information is given regarding the nature of this alleged assault. He is noted in the medical records as spitting on the officers, “posturing” at them, screaming at them, and kicking an emergency room trash can (Privileged Documents).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (H) Discourtesy: On July 18, 2017, at § 87(2)(b) in Manhattan, an officer spoke discourteously to § 87(2)(b)**

**Allegation (I) Abuse of Authority: On July 18, 2017, at § 87(2)(b) in Manhattan, an officer threatened § 87(2)(b) with the use of force.**

Whether an officer threatened to use force against § 87(2)(b) used discourteous language against him, and placed a spit mask over his head, restricting his breathing, is in dispute. § 87(2)(b) alleged that an officer said that he did not care if he was in a hospital, he was going to “fuck” him up. § 87(2)(b) was spitting at the officers and trying to bite them. He alleged that the officer who used force against him was the front-seat passenger in the vehicle that took him to the hospital.

PO Ahearne denied using any profanity against § 87(2)(b) or threatening to use force against him.

PO Sallie similarly denied using any profanity. He denied that any officer threatened § 87(2)(b) with force.

As mentioned above, requests to the 14<sup>th</sup> Precinct and IAB returned negative results for a Medical Treatment of Prisoner Form (Board Reviews 19 and 20).

The records from § 87(2)(b) do not include anything else regarding this allegation, though they note, as previously mentioned, violent and erratic behavior from § 87(2)(b) (Privileged Documents).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (J) Force: On July 18, 2017, at § 87(2)(b) Police Officer Edward Ahearne restricted § 87(2)(b) s breathing.**

It is undisputed that inside of the § 87(2)(b) psychiatric emergency room, § 87(2)(b) was agitated. He spit at PO Sallie and PO Ahearne. It is undisputed that PO Ahearne tried unsuccessfully to place a spit mask over § 87(2)(b) s face as a result. Whether PO Ahearne balled up the spit mask and put it in § 87(2)(b) s mouth is in dispute.

§ 87(2)(b) testified that he was trying to spit at and bite the officers while he was in the emergency room. Officers balled up a spit mask and put it in his mouth. This action restricted § 87(2)(b) s breathing.

PO Ahearne admitted to being the officer who tried putting the spit mask on § 87(2)(b) s head. He had trouble putting the spit mask on § 87(2)(b) s head, because the straps of the mask



were broken, but he denied placing it in § 87(2)(b)'s mouth, and he did not believe at any time that § 87(2)(b)'s breathing was restricted.

PO Sallie also denied that any officer put a spit mask in § 87(2)(b)'s mouth, and also did not believe that at any time, § 87(2)(b)'s breathing was restricted.

The § 87(2)(b) records do not indicate any restriction of breathing for § 87(2)(b) (Privileged Documents.)

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
  - [REDACTED]
- Lt. Johnson has been a member of service for 13 years. Three prior CCRB complaints and six prior CCRB allegations have been filed against him. None have been substantiated.
  - § 87(2)(g) [REDACTED]
- PO Ahearne has been a member of service for 6 years. Seven prior complaints and 18 prior allegations have been filed against him.
  - § 87(2)(g) [REDACTED]

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to the arrest.
- As of February 13, 2020, there is no Notice of Claim filed on behalf of § 87(2)(b) for this case, according to the New York City Office of the Comptroller (Board Review 16).
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] As a result of this incident, he was convicted of attempted murder § 87(2)(b) [REDACTED]  
[REDACTED]

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Squad No.: 11

Investigator: Miriam Lynch SI Miriam Lynch 04/14/2020  
Signature Print Title & Name Date

Squad Leader: Edwin Pena IM Edwin Pena 04/16/20  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_